Tax

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Wide-ranging PPACA repeal bill heads to White House; Obama promises veto

The House of Representatives voted 240-181 on January 6 to approve Senate-passed legislation that would repeal the bulk of the tax provisions enacted in the Patient Protection and Affordable Care Act of 2010 (PPACA) and take the teeth out of the PPACA's health insurance coverage mandates for individuals and employers. The vote count fell almost entirely along party lines: only one Democrat supported the measure and three Republicans crossed over to the "no" column.

The Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (H.R. 3762) won passage in the Senate last month under the fast-track budget reconciliation process, which allows for passage of certain legislation in that chamber by a simple majority vote, as opposed to the 60 votes normally required to clear procedural hurdles – a useful tool for Senate Republicans, who currently hold 54 seats. The Senate-approved bill amended – and significantly expanded – a prior version of H.R. 3762 that was passed in the House last October. (For coverage of the earlier House bill, see *Tax News & Views*, Vol. 16, No. 36, Oct. 23, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151023_4.html

H.R. 3762 is the first bill undermining core provisions of the PPACA to clear both chambers and make its way to the White House. (The House has voted multiple times in recent years to dismantle the PPACA in its entirety or in discrete parts; however, those bills generally lacked the procedural protections available under the reconciliation process and were routinely blocked in the Senate or were not seen as striking at the core of the law.)

But H.R. 3762's milestone status is blunted by the fact that it faces a certain veto from President Obama.

Medical device, Cadillac taxes

As approved in both chambers, H.R. 3762 would eliminate:

- The 2.3 percent excise tax imposed on the sale of certain medical devices. The medical device excise tax became effective for sales of such devices after December 31, 2012; however, it was suspended for sales in 2016 and 2017 under the combined tax extenders and government appropriations package (H.R. 2029, P.L. 114-113) that Congress approved and President Obama signed into law last month. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 44, Dec. 18, 2015.)
  URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151218_1.html
- The 40 percent excise tax imposed on certain high cost employer-sponsored health coverage (informally known as the "Cadillac" tax) which was scheduled to take effect in 2018 but was delayed until 2020 under the new extenders-appropriations law.

Insurance coverage mandates

The legislation technically would retain the PPACA's insurance coverage requirements under the individual and employer mandates; however, the penalties for noncompliance would be reduced to zero. (Senate managers structured their bill in this way – rather than calling for outright repeal of the two mandates – in order to avoid potential parliamentary concerns in that chamber.)

Additional PPACA tax provisions targeted for repeal

H.R. 3762 also would repeal a number of other PPACA tax provisions affecting businesses and individuals, including:

- The 3.8 percent net investment income tax on certain unearned income of joint filers with adjusted gross income (AGI) over $250,000 ($200,000 for individuals).
- The additional 0.9 percent Medicare Hospital Insurance tax on wages over $250,000 for joint filers ($200,000 for individuals).
- The elimination of the deduction for expenses allocable to the Medicare Part D subsidy.
- The annual fee on US health insurance providers. (This fee was suspended for 2017 under the recently enacted extenders-appropriations package.)
- The fee imposed on manufacturers and importers of branded prescription drugs.
- The $500,000 limitation on deductions for executive compensation paid by covered health insurance providers.
- Restrictions on tax-free reimbursements for certain over-the-counter drugs under flexible spending arrangements, health reimbursement arrangements, health savings accounts, and medical savings accounts.
- Limitations on contributions to flexible spending accounts.
- The 20 percent penalty on nonqualified distributions from health savings accounts and Archer medical savings accounts. (The penalty would revert to 10 percent for health savings accounts and 15 percent for Archer medical savings accounts.)
- The 10-percent-of-AGI floor for claiming the itemized deduction for medical expenses. (The floor would revert to the prior-law level of 7.5 percent of AGI.)

- The tax on indoor tanning services.

H.R. 3762 would repeal a non-health care revenue offset in the PPACA that codifies the economic substance doctrine (which requires taxpayers to show that a transaction changes their economic position in a meaningful way apart from the federal income tax effects and that they had a substantial purpose apart from the federal income tax effects for entering into the transaction). In addition, it would eliminate the 40 percent strict liability penalty on understatements attributable to undisclosed noneconomic substance transactions (20 percent if a transaction is adequately disclosed).

On the expenditure side, the legislation would repeal the tax credit for small-business employee health coverage and the premium tax credit and cost-sharing subsidies for certain lower-income individuals. It also would modify the rules for recapturing excess advance payments of premium tax credits.

None of these provisions were included in the version of H.R. 3762 that the House approved in October. Most of them were inserted into the Senate version of the bill in a substitute amendment shortly before that chamber voted on final passage late on December 3.

Nontax provisions

In accordance with the budget reconciliation instructions that were included in the fiscal year 2016 budget resolution adopted by Congress earlier this year, the legislation also incorporates provisions to repeal certain nontax elements of the PPACA that were reported out of other congressional committees with jurisdiction over the health care law.

CBO score

According to a revenue estimate released by the Congressional Budget Office (CBO) on January 4, H.R. 3762, if enacted, would result in a net reduction in the federal deficit of $317.5 billion between 2016 and 2025 under traditional “static” scoring methods. Under “dynamic” scoring methods, which factor in macroeconomic effects, the legislation would reduce the deficit by an estimated $516 billion over the same period, CBO said. (CBO’s estimates include the impact of PPACA-related changes enacted in last month’s extenders and appropriations package.)
URL: https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr3762followingenactmentofconsolidatedappropsactof2016.pdf

Veto inevitable

Although the White House has not issued an official statement in the wake of the House vote, President Obama has consistently vowed to veto dozens of prior proposals to undo the PPACA that have been put forward in recent years.

In a statement of administration policy issued shortly before the Senate vote on H.R. 3762 last month, the White House noted that “by repealing numerous, key elements of current law, this legislation would take away critical benefits and health care coverage from hard-working middle-class families.” The statement urged Congress to avoid “refighting old political battles”

and instead focus on “working together to grow the economy, strengthen middle-class families, and create new jobs.”
URL: https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr3762s_20151202.pdf

Because H.R. 3762 did not pass by a veto-proof – that is, two-thirds – majority in either chamber, it appears all but certain that Republicans will be unable to muster the level of support required for a veto override.

Ryan: Passage of PPACA repeal part of broader GOP agenda

For his part, House Speaker Paul Ryan, R-Wis., argued in a January 6 blog post that passage of H.R. 3762, even in the face of a guaranteed veto, is part of a Republican strategy to draw a contrast with Democrats ahead of the 2016 congressional and presidential elections and demonstrate the direction a Republican-led Congress and White House would take on US tax policy.
URL: http://www.speaker.gov/general/onhisdesk-a-bill-to-repeal-obamacare

“With Republican majorities in the House and Senate, no longer can [President Obama] hide behind a Democrat-controlled Senate willing to do his dirty work for him. By using the budget reconciliation process, which allows Congress – once a year – to avoid a filibuster in the Senate, this will be the first time ever both chambers of Congress approve an Obamacare repeal measure, forcing the president to either sign or veto,” Ryan said. “House Republicans are starting 2016 unified in opposition to this law and focused on putting together a patient-centered alternative that grants Americans freedom in their health care choices.”

In a similar vein, Ryan has stated in recent weeks that House Republicans hope to move tax reform legislation in 2016 even though they believe that enactment of a comprehensive tax code overhaul is unlikely until after President Obama leaves office.

House Republicans intend to discuss their 2016 legislative agenda in more detail during a retreat in Baltimore scheduled for January 13-15; Ways and Means Committee Republicans will hold a planning meeting of their own on January 25. (See related coverage in this issue for additional discussion.)

— Michael DeHoff
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Ways and Means agenda for 2016 includes tax reform, Brady says

The tax reform agenda for 2016 and beyond will be a topic of discussion at two upcoming meetings for House Republicans, Ways and Means Committee Chairman Kevin Brady, R-Texas, told reporters this week.

“We’re advancing tax reform, one or more ways, in 2016,” Brady said.

The 246 members of the House Republican Conference will convene in Baltimore for their annual retreat which begins January 13, just one day after President Obama delivers his final State of the Union address. Later this month, on January 25, the Republican members of Ways and Means will hold their own smaller planning meeting.

House Speaker Paul Ryan, R-Wis., has said he wants his party to help shape the conservative policy agenda for this year's presidential campaign and for the eventual Republican nominee. As a former chairman of the Ways and Means Committee, Ryan continues to place tax reform high on his list of priorities. Both he and Brady have indicated they hope to make some progress on international tax reform this year, although they believe broader reform will have to wait until there is a Republican in the White House.

Ways and Means Tax Policy Subcommittee Chairman Charles Boustany, R-La., told reporters this week that Republicans "have to determine what, as a priority, we can do this year, if anything" and consider how to "set the stage for tax reform after the election." Boustany also said he plans to chair a series of hearings this year on the interplay between tax reform and the US economy.

On the international front, Tax Policy Subcommittee ranking member Richard Neal, D-Mass., told Tax Analysts this week that he hopes to continue working with Boustany on the innovation box proposal they released as a discussion draft last summer, which calls for a lower tax rate on certain income from patents and a broad range of other intellectual property. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 27, July 31, 2015.) Since the draft was released, Boustany and Neal have received input from interested stakeholders and say they hope to refine the proposal.
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150731_1.html

McDermott to retire after this term

In other Ways and Means developments, Health Subcommittee ranking member Jim McDermott, D-Wash., announced this week that he will retire at the end of the current congressional session, after 14 terms in office. McDermott is the third-ranking Democrat on the taxwriting panel, behind ranking member Sander Levin of Michigan and Rep. Charles Rangel of New York.

McDermott is not the only long-tenured Democrat who will leave the Ways and Means Committee when the 115th Congress convenes next January. Rangel – who, with 44 years in office, is the second-most senior member of the House – announced in 2014 that this term would be his last. He served as the chairman of the Ways and Means Committee from January 2007 to March 2010.

At least two Ways and Means Committee Republicans will also be departing after this year. Tax Policy Subcommittee Chairman Boustany is running for an open Senate seat in Louisiana this coming November. House GOP taxwriter Todd Young of Indiana likewise is mounting a Senate run.

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White House budget package to be released February 9

The Obama administration announced January 7 that it will release its budget proposal for fiscal year 2017 on Tuesday, February 9. By statute, every president is required to submit an annual tax-and-spending blueprint to Congress on the first Monday in February, which in 2016 falls on February 1. In practice, however, different presidential administrations have adhered to the statutory deadline with varying degrees of consistency.

President Obama is likely to preview his budgetary priorities for the coming fiscal year in his State of the Union message on January 12.

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